



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

DAS
F.#2003R00405

*271 Cadman Plaza East
Brooklyn, New York 11201*

February 13, 2012

BY HAND, EMAIL & ECF

The Honorable Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Myron L. Gushlak
Criminal Docket No. 03-833 (NGG)

Dear Judge Garaufis:

Last week, counsel for the defendant notified the government that Gushlak intends to call two expert witnesses, Robert Lowry and David Juran, to testify at the restitution hearing in the above-captioned matter, scheduled for tomorrow, February 14, 2012. Although the defense previously submitted an expert report for Mr. Lowry, that report addressed issues which are no longer relevant to the instant proceeding. Yesterday, counsel for the defendant informed the government that Mr. Lowry will be testifying concerning entirely new matters not addressed in his prior expert report. No new expert report for Mr. Lowry has been filed.

The defendant's use of Mr. Lowry in this manner is contrary to the spirit of the Court's order of July 26, 2011. In that order, the Court specified that, if Gushlak wished to call an expert to testify at the restitution hearing, he must file an expert report substantially in advance of that hearing. See Memorandum and Order, July 26, 2011, Docket Entry 58, at 16. While Gushlak has complied with this requirement with respect to Mr. Juran, he has failed to do so with respect to Mr. Lowry.

Gushlak's failure to comply with the Court's order is particularly problematic here. As the government will demonstrate at the hearing, many of Gushlak's expert's claims may be superficially appealing, but unravel upon closer examination. Under such circumstances, forcing the government to cross-examine

Mr. Lowry without the benefit of an expert report on the subject of his testimony puts the government at a substantial disadvantage, as the government may not be in a position to adequately cross-examine Lowry concerning certain statements and conclusions.

The government therefore respectfully submits that the Court should preclude Mr. Lowry from testifying in this matter.

Respectfully Submitted,

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